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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/703,909	11/01/2000	Todd P. Guay	1958.1031-000	3199
58403	7590	08/10/2006	EXAMINER	
BARRY W. CHAPIN, ESQ. CHAPIN INTELLECTUAL PROPERTY LAW, LLC WESTBOROUGH OFFICE PARK 1700 WEST PARK DRIVE WESTBOROUGH, MA 01581			PHAM, KHANH B	
			ART UNIT	PAPER NUMBER
			2166	

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/703,909	Applicant(s) GUAY ET AL.	
	Examiner Khanh B. Pham	Art Unit 2166	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 5/30 and 6/28 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,2,5-18,20-30,32-58,61-84,87-111 and 114-136.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Kpham

Khanh B. Pham
Primary Examiner
Art Unit: 2166

Continuation of 11:

Applicant's arguments filed May 20, 2006 with respected to amended claims 1, 27, 53, and 110 have been fully considered but they are not persuasive. The examiner respectfully traverses applicant's arguments.

Regarding claim 27 and its dependent claims, applicant argued that Adya fail to disclose "a solution refiner that further generates at least one new candidate index solution by eliminating at least one index on a small table under evaluation, wherein the at least one index does not enforce an integrity constraint". On the contrary, as discussed earlier in the rejection of claim 27, Adya teaches the step of benefit based pruning to eliminate indexes with low benefit at Col. 11 lines 13-30 and Fig. 7. Adya also teaches at Col. 2 lines 55-65 how database design effects the selection of indexes in term of small vs. big table. Adya recognizes the fact that indexes in big tables provide most benefit comparing to small tables and concludes that: "if the optimizer does not consider a particular index for a query, then its presence in the database does not benefit that query." Adya therefore anticipated the claimed limitation by suggesting the step of eliminating index on the table which provides the least benefit (i.e., indexes on small tables) , wherein the index does not enforce an integrity constraint as claimed.

Regarding claims 1, 53, 54 and 110, applicant argued that Chaudhuri II fails to teach or suggest "repeatedly deriving a candidate index set and analyzing collected statistic based on the proposed index set". On the contrary, Chaudhuri II teaches at Col. 23 lines 48-67 that a database administrator exploring more than one what-if index analysis scenarios and evaluating each relative to an existing database configuration. The plain meaning of "repeat" is "to say, state, or perform again", Chaudhuri II performed the steps twice and therefore meet the requirement of the claimed limitation. Applicant further argued that Chaudhuri fails to teaches or suggest "terminating the repeated execution when at least one candidate index solution is found". On the contrary, Chaudhuri teaches that the database administrator only perform the steps twice and therefore the execution is terminated after the second time and at least one candidate index solution is found. Chaudhuri II also teaches at Col. 15, lines 55-6 the relationship between removing indexes and degrading the performance of database system.

In light of the foregoing arguments, the 35 U.S.C 102 and 103 rejections are hereby sustained.